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# **CONFIDENTIAL.**

## **Minutes of the Conference of Presidents and Deputy Presidents of Provincial Legislative Councils under the Chairmanship of the Honourable Mr. V. J. Patel, President of the Legislative Assembly.**

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*3rd and 4th September 1926.*

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The following were present on both days :—

1. The Honourable Mr. V. J. PATEL, President of the Legislative Assembly, *Chairman*.
2. The Honourable Kumar SHIB SHEKARESWAR RAY, President of the Bengal Legislative Council.
3. The Honourable Khan Bahadur KHWAJA MUHAMMAD NOOR, President of the Bihar and Orissa Legislative Council.
4. The Honourable Rai Bahadur Lala SITA RAM, M.A., LL.B., President of the United Provinces Legislative Council.
5. The Honourable Mr. V. KALE, President of the Central Provinces Legislative Council.
6. The Honourable Maulvi ABDUL HAMID, President of the Assam Legislative Council.
7. Diwan Bahadur T. RANGACHARIAR, Deputy President of the Legislative Assembly.
8. Dr. A. SUHRAWARDY, M.L.C., Deputy President of the Bengal Legislative Council.
9. Babu GOPENDRALAL DAS CHAUDHURI, M.L.C., Deputy President of the Assam Legislative Council.
10. Mr. A. DE C. WILLIAMS, Secretary of the Bengal Legislative Council.

Mr. J. A. SAMUEL, Attaché in the Legislative Department, acted as Secretary of the Conference.

In opening the proceedings the Chairman welcomed all those present and said that he was sure that they would join with him in regretting the absence of some of the other Presidents and Deputy Presidents who for unavoidable reasons could not be present. He said that this was the last Conference which would meet under the present Councils, and as there would be no opportunity of meeting until some time after the election of the new Councils, he thought it advisable to invite them to exchange views on questions of mutual interest to all.

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The Conference then proceeded to discuss the various items on the agenda placed before it.

### GENERAL.

I. *Should the President be consulted by the Governor before the Council is prorogued or summoned, and should he be at liberty to suggest to the Governor the calling of a meeting of the Council?*

The Chairman opening the discussion said that there was clearly no obligation on the Governor General or Governor to consult the President about the fixing of dates, though, as a matter of courtesy, it was desirable that the convenience of the President should be consulted. The Presidents of Bengal and Bihar and Orissa said that it was the practice in their provinces for the President to be consulted before these dates were fixed or before the Council was prorogued. The President of Assam suggested that, apart from the convenience of the President, it was desirable that the convenience of the members should also be consulted. It was, however, pointed out that the President could be taken as the spokesman of the members of the Council.

The President, Central Provinces, said that in raising this question he had in view the particular difficulties and inconvenience caused to members of the Central Provinces Council owing to the prorogation of the Council some time before the completion of the programme of business, with the effect that members were unable to take up the items of non-official business for which days had already been allotted. The President, United Provinces, was inclined to doubt whether the Governor could prorogue the Council at any time. The President, Bengal, suggested that there was no limit to the power of the Governor to do this, an opinion with which the Chairman agreed. The President, United Provinces, however said that this power was not an arbitrary power and that prorogation was normally intended to take place only when the various items of business for which days had been allotted had been completed. The President, Bihar and Orissa, agreed with the view that the power of the Governor was unlimited. The President, Legislative Assembly, then pointed out that it might be necessary under certain circumstances for the Governor to prorogue the Council before the date originally fixed, and the President, Bengal, said that this was in fact done in Bengal when a suit was instituted in the Calcutta High Court impugning the validity of certain action proposed to be taken by the President. The President, Bihar and Orissa, said that in his view it was not necessary to discuss the powers of the Governor any more than it

was necessary to discuss the powers of the President of the Council to adjourn the Council at any time. The President could for instance adjourn the Council as soon as it met with the result that no official business even could be done and the budget could not be passed. The President, United Provinces, commenting on the opinion of the President, Bihar and Orissa, that the President could adjourn the Council at any time pointed out that adjournment was an extreme step to take, as it would lead to a deadlock, and he therefore suggested that some method should be devised by which the views of the Governor might be brought into harmony with those of the President and the Council generally. The Honourable Khan Bahadur K. M. Noor, however, urged that, as pointed out by the Chairman, the Governor General or Governor might have to dissolve under certain circumstances, and if the power of dissolution was conceded, it was difficult to deny the power of prorogation. The Deputy President, Legislative Assembly, however, pointed out that there was a distinction between dissolution and prorogation, and that prorogation before the date originally fixed had the effect of curtailing the rights of non-official members to discuss matters for which days had been allotted and that the powers of the Governor under section 72B(2) should be read with rule 6. The President, Bihar and Orissa, was of opinion that the powers under rule 6 could not in any way limit the powers under section 72B which were unlimited and that the Conference could not profitably discuss the manner in which the Governor's powers should be exercised. To this, however, it was suggested that although the Conference need not suggest the manner in which the power should be exercised, there was no objection to their suggesting their own point of view. The President of the Legislative Assembly summed up the matter by saying that, although the power of the Governor was unlimited, it was undesirable that he should prorogue the Council before the completion of the agenda without consulting the President, and the President, Assam, was clearly of opinion that although the Presidents could do no more they could at least suggest what their views were; and with this view the Presidents of Bengal and Central Provinces agreed.

The Conference finally decided to record the view that, if certain days were allotted for non-official business, it was undesirable that the power of prorogation should be exercised before the completion of this business and without consulting the President.

*2. Procedure to be observed at the first meeting of the new Council and election of the President.*

There was some discussion as to how the oath should be taken and before whom. The President, Legislative Assembly, expressed the view that the Chairman appointed for the occasion should take the oath first and that other members should follow him and that the Council could then be adjourned—although adjournment on that day might not be necessary and would depend upon the date fixed for the election of the President. It was conceded that the same day might be fixed for the election of the President as for taking oaths. The President, United Provinces, referred to the practice of the House of Commons and raised the question as to whether members had a right to nominate before they took the oath, and it was agreed generally that the provisions of new rule 5A would enable this to be done, though as provided in the rule the nomination would not be valid if at the time when the nominations were read out to the Council the member making any particular nomination had not taken the oath. The President of the Bengal Council raised a subsidiary question as to what should happen in the case of a tie; and the President, Bihar and Orissa, suggested that this would be governed by the provisions of section 72B (4) of the Government of India Act, which laid down that every question in the Council should be decided by a majority of votes. The President, Bengal, however, said that in the case of elimination of candidates there was no necessity for a casting vote at all, upon which the President, Bihar and Orissa, pointed out that until two candidates were left there was no question for the decision of the Council within the meaning of section 72B (4) of the Government of India Act. It was ultimately agreed that the rules for the election of the President made sufficient provision for all emergencies.

*3 (A). Can a member exercise any rights of membership before taking the oath of allegiance?*

It was agreed that this matter had been sufficiently discussed at the Third Conference of Presidents, and that it was unnecessary to discuss it any further.

*(B). Can a person nominated or elected as a member of the Legislative Council take part in the election of a representative of the Council on another body like the Senate of a University before he has taken his oath of allegiance to the Crown?*

The President, United Provinces, then referred to a specific case in which it was required to nominate members to a certain

committee and inquired whether a member could be nominated or elected to any such committee before he had taken the oath. The President, Legislative Assembly, pointed out that if a member had not taken his seat in the House he could not take his seat in any committee. The Deputy President of the Legislative Assembly referred to the electoral rule requiring the taking of oath and expressed the view that this rule clearly showed that a member was a member before taking the oath although he could not sit as such, upon which the President, United Provinces, inquired what would happen in the case of committees other than those of the Council ? The Deputy President, Bengal, suggested that he could sit on other committees, for instance, a committee elected for the Bangalore Institute of Science. The President, Legislative Assembly, stated his view generally that a member was a member for all purposes except the business conducted in the House as such. On this, the President, Bihar and Orissa, referred to the distinction between elections conducted as part of an item of business of the House, and elections which may be conducted by post ; and the Deputy President, Legislative Assembly, also referred to certain elections by members of the Legislative Assembly which were conducted outside the House and not as part of the business of the House. The President, United Provinces, however, stated that in his Council all elections were conducted as part of the business of the House ; and the President, Assam, expressed the view that any election held before the President was an election as part of the business of the House. The President, Bihar and Orissa, however, suggested that in these cases the members of the Council were really constituted into an electoral college and could exercise all electoral rights without the necessity of making the election a part of the business of the Council. Finally, it was agreed that if the election is in a meeting of the Council and is part of the business of the Council then a member who has not taken the oath cannot take part in the election. In other cases he could be elected as a member of any committee, but could not himself vote before he had taken his oath. The President, United Provinces, however, could not agree to this position generally and said that the matter was anomalous and not free from doubt. The President, Legislative Assembly, suggested that although their decision was as stated above, it was desirable that the position should be clarified by amendment of the rules.

4. *Can a motion for the adjournment of the business of the House made under rules M. C. 258 L. D.*



*11 and 12 of the Legislative Council Rules, be—*

(a) *amended*

(b) *withdrawn ?*

(a) It was generally agreed that there could be no amendment to such a motion as the only question which could be put was the question "That this House do now adjourn."

(b) It was also generally agreed that the motion could be withdrawn by leave of the Council.

The President of the Bihar and Orissa Council raised, as a subsidiary question, the question whether, when a motion was required to be withdrawn by leave of the Council, leave should be given by a majority of the Council, or whether the objection of a single member to the motion being withdrawn was sufficient to prevent its being withdrawn.

The President of the United Provinces Council considered that sometimes the question might have to be put to the whole Council and said that this was the practice he followed if he considered that there was any doubt in the matter, and he thought it necessary to obtain the opinion of the whole House, an opinion with which the President of the Bihar and Orissa Council disagreed.

The President of the Bengal Council and the Deputy President of the Legislative Assembly agreed with the opinion of the President of the United Provinces Council, the Deputy President of the Legislative Assembly pointing out that the words in the Standing Order are "a motion for leave to withdraw." The Chairman then referred to a case in which Sir Frederick Whyte was clearly of the opinion that the objection of one member was sufficient.

The President of the Assam Council referred to the difficulty which would be caused to members who might have wished to move the resolution which was being withdrawn and might have given notice if they knew that the motion for leave to withdraw would have been carried.

The President of the Bihar and Orissa Council also referred to the unfairness which might result where certain members made very violent speeches against other members or against another person of the House, as in the case of withdrawal none of the members who had been attacked would have an opportunity of replying.

The President of the Bengal Council, however, expressed the view that there was no way out of the difficulty in view of the provision in the Act requiring every ques-

tion to be decided by a majority of votes, and expressed the view that the question that leave should be given to withdraw was a question within the meaning of this provision.

The Conference finally agreed that in this matter the procedure of the House of Commons should be followed, and that one objection would be sufficient to prevent the motion being withdrawn. They, however, considered it desirable that the Standing Orders should be amended to make this clear. The opinion on the matter expressed by the second Conference of Presidents was generally accepted.

*5. Can the President, if he thinks that the debate has been sufficient, put the question of his own accord?*

The Presidents of the United Provinces and Bengal stated that it was their practice to put the question of their own accord, if they considered that the debate had been sufficient.

The Deputy President of the Legislative Assembly, however, pointed out that if members wished to speak, the President had no power to put the question, an opinion with which the President of the Bihar and Orissa Council agreed. The latter further pointed out that if the President attempted to interfere in matters of this kind, he might run the risk of being accused of partiality, for instance, if he put the question on a certain resolution so as to enable a succeeding resolution to come up earlier than it otherwise would have.

The Presidents of Bengal and the United Provinces pointed out that in the case of repetition of arguments it was clearly in the power of the President to intervene. It was agreed that this power existed, but it was pointed out that the President could not say before hand when a member rose to speak whether he would repeat the previous arguments. The President of the Bengal Council however urged that the President, putting the question was not so much a matter of putting the closure as the judicious exercise of his right to catch or not to catch the member's eye, and that he could refuse to see members who wanted to speak and call upon the Government member to reply.

The Chairman, however, pointed out that at the same time as the Government member rose another member might rise and say that he wishes to speak, and he suggested that on the whole it would not be safe for the President to interfere in matters of this kind.

Ultimately it was agreed that, although

it was for the House to decide as to the closure being adopted, it was not necessary to lay down any general rule, and that a President could, if he thought the sense of the House was with him, put the question without the closure.

6. *Should the closure be accepted when a motion for the adjournment of the House for purposes of debate is under discussion?*

It was generally agreed that there was nothing to prevent the closure being applied in motions for adjournment, and in fact, as the President of Bihar and Orissa pointed out, unless the closure was put, the motion ran the risk of being talked out.

7. *What is the interpretation of Standing Order 6(2) of the Bengal Standing Orders? What is the exact significance of the expression "Complete session" in the proviso to that Standing Order?*

The President of the Bengal Council opening the discussion referred to particular cases in the Bengal Council where certain non-official Bills were pending. In the succeeding session of the Council no dates had been allotted for non-official Bills with the consequence that the question arose whether, in view of the fact that no motion had been or indeed could be made as regards these Bills, they would lapse under the provisions of the Standing Order referred to. He said that he was impressed with the hardship which would be occasioned to members by a strict interpretation of this rule and that he was inclined to take the view that the words "complete session" meant session in which opportunity was given for members to make a motion of the kind referred to in that Standing Order. In this view the President of the United Provinces Council agreed. The President of the Bihar and Orissa Council, however, doubted whether this was the correct view, and he pointed out that the Standing Order would apply even if the member had given notice of a motion and this motion was not taken up. The President of the Bengal Council thereupon inquired what would be the definition of the phrase "complete session" here. The Chairman suggested that the session would ordinarily mean the period between the first meeting of the Council and the date of its prorogation, while the President of the Bihar and Orissa Council considered that the phrase "two complete sessions" merely meant the complete period of two consecutive sessions.

The Conference generally agreed that the phrase "complete session" should be taken to mean the period between the first meeting of the Council and the date of its prorogation, and that it was not possible to

introduce in the definition any limitations as regards the opportunities for any particular business to be transacted during such Session.

8. *What is the meaning of "grossly disorderly" ? There has been some difference of opinion as to the intention of the phrase.*

The Chairman was of opinion that it was impossible to suggest any general definition of the phrase "grossly disorderly". The President of the Bengal Council referred to the particular incident in the Bengal Council in which after the President had given a certain ruling a certain member shouted out "shame". The President of the Bihar and Orissa Council said that if such a remark was made in connection with his rulings, he would take disciplinary action against the member. The President of the Bengal Council, however, stated that he desired to have the view of the Conference as to whether a general definition could be given of the phrase "grossly disorderly." The President of the Bihar and Orissa Council was of opinion that no general definition was possible. If the cry of "shame" was made as regards a member of the Council he would not consider this grossly disorderly, though if a similar cry was raised in regard to the President he would certainly consider it grossly disorderly. The Chairman generally agreed with the views of the President of the Bihar and Orissa Council and stated that any insinuation against the Chair would come within the phrase "grossly disorderly." The President of the Bihar and Orissa Council suggested that generally it might be taken that the phrase "grossly disorderly" referred to any conduct which would have the effect of making the conduct of business in the Council impossible, and that anything which suggested the impugning of the validity of the President's rulings was calculated to have this effect, as any disregard of the President's rulings would obviously make the conduct of business impossible. The Chairman further suggested that the President would be exercising a wise discretion in ignoring such remarks as far as possible unless they were pointedly directed to him or if the remarks were repeated in his hearing, in which case it was incumbent upon him to take disciplinary action. With this view the Conference generally agreed.

9. *What is the effect of the words "unless the President in the exercise of his power to suspend this order allows the motion to be made" in the proviso to Standing Order 43 of the Bengal Council ? It has been argued that there is no substantive rule or standing*

*Order conferring on the President the right to suspend certain Standing Orders (as there was in the old pre-reformed Council). In Bengal it was always held that a Standing Order which refers to the President's power to suspend it practically confers that power. Is this correct?*

It was pointed out that the old Standing Orders which were in force before the Reforms contained a general provision enabling the President to suspend any Standing Order. This provision had been omitted in the new Standing Orders of the Bengal Council, and it had been urged that in view of the omission of this general power to suspend the Standing Orders there was some doubt as to whether the words referred to in the question actually conferred the power on the President to suspend the Standing Orders. The Chairman said that the effect of the omission of the general power to suspend Standing Orders took away from the President the power to suspend Standing Orders generally and that the words referred to in the question clearly gave the President the power to suspend the Standing Order in which those words occurred. With this view the Conference generally agreed.

**10.** *The question of branches of the Empire Parliamentary Association, in connection with Provincial Councils—representation of the Provincial Councils at meetings and conference of the Empire Parliamentary Association.*

The Deputy President of the Legislative Assembly stated that the Chairman of the Empire Parliamentary Association had secured an amendment of the rules of the Association so as to include the Indian Legislature as a branch of the Association, but that the Provincial Legislatures had not yet been included as branches. He further stated that the President of the Empire Parliamentary Association thought that it would be better first to consider the question of the representation of the Indian Legislatures.

The Conference generally agreed that it was premature to discuss this matter, and that it would be more profitably taken up later on after some experience of the Indian Legislatures in connection with the work of the Empire Parliamentary Association.

### QUESTIONS.

**1.** *Can questions of which notice is given by members who are absent on the day when they are to be put in the Council be put and answered?*

The President of the Central Provinces said that he had raised this ques-

tion with a view to a particular difficulty which arose after certain members of the Council of the Central Provinces had left the Council. On a point of order being raised as to whether questions which stood in the names of these absent members could be put and answered, he ruled that this could not be done, following in this respect the Parliamentary practice.

The Deputy President of the Legislative Assembly, however, called his attention to Standing Order 19 which was perfectly clear on this matter, and the President of the Assam Council referred to the question as to how the proceedings should report that the answer was given in the absence of the questioner. The President of the United Provinces Council said that in the United Provinces answers to questions standing in the names of absent members are printed regularly in the proceedings and that he did not want to change this practice. It was however, generally agreed that there would not be much difficulty in reporting this, as reference would simply be made to the fact that the President had ordered that the answer should be given at the request of a member other than the member putting the question. This was thought to be necessary in view of the fact that the question might otherwise appear in the name of a member who was really absent.

*2. Can a member who is absent authorize another member to put a question for him?*

It was generally agreed that he could give such authority, but that it was within the discretion of the President to accept this delegation or not.

*3. What procedure should be adopted as regards questions which are left unanswered, at the end of a session? Should supplementaries be allowed in answer to lapsed questions which are laid on the table at the next session?*

The President of the Bengal Council stated that the Bengal Standing Order had been amended so as to provide that questions which remained unanswered at the end of one session could, if the member so desired, be carried over to the next session.

The President of the Bihar and Orissa Council said that similar amendments had been proposed in the Standing Orders but were not carried out, as Government agreed to lay the answers on the table at the next session.

It was finally agreed that it was a matter which would depend upon the particular Standing Order in force.

The second part of the question was not discussed as the President of the Bihar and Orissa Council, who had given notice

of the question stated that he did not desire to discuss it.

### RESOLUTIONS.

1. *Interpretation of Rule 22(1) and Standing Order 60.* Is the President bound to disallow, under Standing Order 60, a resolution which in his opinion is not the primary concern of the Governor General or the Governor, but which is otherwise in order?

The Chairman said that he had included this question in the Agenda. He stated that though it was clear that he had no power to disallow a resolution on this ground, the fact of its admission and the subsequent disallowance by the Governor General created an apparent conflict between the orders of the President and the Governor General.

The Deputy President of the Legislative Assembly said that there was no real conflict, as the responsibility really rested with the Governor General and the President had no power to disallow.

The President of the Assam Council said that in his province this difficulty was avoided by sending resolutions to the Governor before passing orders.

The President of the Bihar and Orissa Council suggested that this was really a matter of policy which it was better to leave to the decision of the Governor or Governor General, while the question of the form of the resolution was primarily one for the President.

The Chairman, however, urged that the apparent conflict still remains, upon which the Deputy President of the Bengal Council enquired what suggestion he would offer. The Chairman then said that he considered that the President should have the same power as regards resolutions as he had in respect to questions. An instance was then referred to in which the Governor of Bengal had disallowed a resolution and subsequently admitted it on notice being given at a later session, and it was pointed out that, if the President were given the power to disallow, he would be taking away from the Governor the power to allow the discussion of that resolution.

The President of the Bihar and Orissa Council then pointed out that in his Council in many cases resolutions relating to Central subjects, e.g., Railways, were admitted and he contended that in many cases the Governor would welcome a discussion of such subjects, as it would probably strengthen the hands of the Local Government in any representations which they might wish to make to the Governor General in Council and that the same would apply as regards resolutions as to matters which were pri-

marily within the powers of the Secretary of State, as the Governor General might welcome the views of the Legislative Assembly on such matters.

It was ultimately agreed that the President has clearly no power to disallow such a resolution and that it was on the whole better that this power should remain with the Governor or Governor General.

*2. Is there any objection to members of Government moving resolutions which are recommendations to Government?*

It was generally agreed that there was no difficulty as regards this, and it was in fact the practice in most Councils to admit such resolutions, except in Madras.

In the absence of the President of the Madras Legislative Council, who had sent notice of this question, it was not possible to say exactly what were the views which determined the disallowance of such resolutions in Madras.

*3. Are resolutions by non-official members recommending the grant of definite sums of money for particular objects admissible or not?*

It was generally agreed that such resolutions were admissible and in fact the practice in all Councils, except Madras, was to admit such resolutions.

*4. Is a resolution of the Government admissible which seeks to carry forward to the next year the unspent portion of the budget provisions on account of Major Works, subject to the condition that the expenditure proposed to be incurred will not exceed the amount previously voted by the Council, and that a supplementary demand will be put forward at the next meeting of the Council?*

It was generally agreed that the resolution was in order and admissible, and that the President was not concerned with its probable effect or with its consistency with the rules of financial procedure laid down in the Government of India Act and the Devolution Rules.

The Deputy President of the Legislative Assembly in this connection referred to a convention in the Assembly by which the sums voted for railway expenditure and unspent at the close of the year were allowed to be carried forward to the next year.

## LEGISLATION.

*1. Effect of Government of India's letter No. F.-290-2825, dated the 13th June 1925, to the Chief Secretary to the Government of Madras. Sanction granted by the Governor General under section 80-A (3)—*

*(a) Is it a personal sanction?*

*(b) Should a fresh sanction be asked for after each prorogation?*



The Honourable Khan Bahadur Khwaj Muhammad Noor expressed the view that the question whether the sanction given to was *personal* and so available only to one member, would depend upon the form in which the sanction was given. If sanction to the introduction of a particular Bill was specifically given to A, it could not be used to support a notice of the intention to move for leave to introduce that Bill, if given by B.

He however considered that the matter was largely academic so far as the Conference was concerned, as the Governor General was the deciding authority and it could be assumed that the principles enunciated in the letter would be followed by the Governor General, and that the President in any particular case would be bound by such decision. The Honourable Maulvi Abdul Hamid was inclined to disagree with the view that sanction was purely *personal* and considered that the proper view would be to hold sanction was merely an intimation that the sanctioning authority had no objection to the principles embodied in the Bill and that therefore the sanction must be regarded as given to the legislature and not necessarily to one member.

Diwan Bahadur T. Rangachariar referred to section 80-C of the Government of India Act and pointed out that the section clearly referred to sanction given to a particular member, though section 80-A-(3) did not in terms refer to such a sanction as in this case the restriction was upon the powers of the local Legislative Council.

The Honourable Maulvi Abdul Hamid thereupon urged that the terms of section 80-A (3) supported his contention that the sanction to the introduction of a Bill was given to the legislature and not necessarily to a particular individual.

After some discussion it was generally agreed that it was unnecessary for the Conference to discuss this matter as they would be bound by the decision of the Governor General which would presumably be in accordance with the principles laid down in the letter.

*2. If sanction is obtained by a particular member to the introduction of a certain Bill during a particular Council, can that sanction be utilised by that member alone and not by any other member, or can that sanction be utilised by the member during that particular Council only and not during the next Council after a fresh election ?*

The point raised in the first portion was not discussed further as it was agreed that it had been sufficiently discussed under the preceding item.

As regards the question as to the period during which the sanction would be effective the Conference was clearly of opinion that the sanction could not be used after a dissolution of the Council.

3. *Where a member has given notice of his intention to move for leave to introduce a Bill with a copy of the sanction attached but has not been able to introduce the Bill before prorogation can he utilise the sanction and give fresh notice during the next Session?*

The Honourable Rai Bahadur Lala Sita Ram referred to the relevant portion of the letter discussed under the two preceding items, which is as follows:—

“In practice there is now in force a more rigorous rule, for fresh sanction is required whenever a notice lapses owing to prorogation. It appears to the Government of India that as a Bill which has been sanctioned and introduced lapses, it cannot be held that the sanction survives if the notice of intention to move for leave to introduce has not been implemented by introduction rather they think it should be held *a fortiori* that the sanction lapses if the Bill of which the notice has been sanctioned has not been introduced.”

He further said that there was nothing in the letter to show what practice was referred to as he was unaware of any such practice being followed in the United Provinces.

Maulvi Abdul Hamid pointed out that this rule might result in hardship to the member concerned as he might for unavoidable reasons be unable to introduce the Bill in the session immediately following the receipt of sanction and that as sanction cannot always be obtained on short notice he might not be able to get sanction in time for the next succeeding session. Further he enquired what was to happen in a case where no days had been allotted for non-official Bills.

The Conference unanimously agreed that the view propounded in the paragraph of the letter quoted above was unacceptable and that in such cases the President should accept the unutilized sanction as valid and leave it to the local Governments to object and obtain the decision of the Governor General.

4. *Can a motion for leave to introduce a Bill be made by a member other than the member giving notice—*

- (a) *in the case of Bills requiring previous sanction, and*
- (b) *in the case of other Bills?*

The Conference generally agreed that there was nothing in the Rules or Standing Orders similar to the provision in certain Standing Orders as regards the Resolutions which would enable a motion for leave to introduce a Bill being made by a member other than the member giving notice.

5. *In Bengal it has been held that in the case of non-official Bills no member other than the member who gives notice of the introduction of a Bill can move a motion for the introduction of a Bill. Is this correct?*

It was agreed that it was unnecessary to discuss this question as it had been sufficiently discussed under the preceding item.

6. *Should the Councils adopt the procedure of the House of Commons as regards resolutions embodying certain instructions to the Committee of the House on the Second Reading of a Bill under certain restrictions without a change in the Standing Orders? Should a change in the Standing Orders be necessary then, what form should that change take?*

7. *At what stage can a Council instruct a Committee as to the changes to be made in the principles of a Bill. Can such an instruction be given at the time when the Bill is originally sent to a Committee?*

The President of the United Provinces Council opening the discussion observed that only general principles were taken to be accepted on the second reading of a Bill, and that there was no power to modify those principles at later stages. He said that he was impressed by the difficulty which would be felt by members who, on the first reading, while accepting most of the principles contained in the Bill, were anxious that they should be modified, or that some should be deleted and others added, and he suggested that it would be advisable to provide for some procedure whereby the wishes of such members could be carried out and suggested that instructions to the Select Committee would be the easiest method of securing this object. He referred to particular instances cited in Bombay where the difficulty had occurred. He quoted from pages 25-26 of Chamier's *Parliamentary Procedure in India*. In Bombay he said, the President had allowed an amendment to the principles of a Bill to be moved before its reference to a Select Committee. The President of the Legislative Assembly had also to deal with a similar case. The President of the United Provinces further maintained that, at present, discussion of a Bill on a motion that it be referred to Select Committee was mostly ineffective talk and could not focus the attention of the House to any definite points.

The President of the Bihar and Orissa Council observed that it was inconsistent to refer a Bill to a Select Committee, which was in effect an acceptance of the principle of a Bill, and then provide by instructions for a reversal or abandonment of the very principles which had been accepted by the

reference to Select Committee. The President of the United Provinces Council, however, considered that there was no power to issue instructions to the Select Committee, and it was difficult for the Select Committee to effect any such amendment in the Bill. The Chairman, however, pointed out that there was nothing in the Rules and Standing Orders as they stood to prevent a Select Committee from making whatever amendments it considered desirable as long as those amendments were within the scope of the original Bill. The President of the Bihar and Orissa Council further inquired whether under the Rules and Standing Orders as they stood, there was any objection to an amendment being made to a motion that the Bill be referred to a Select Committee providing for the issue of instructions to the Select Committee, whereupon it was pointed out that in Bengal this had as a matter of fact been allowed. The President of the United Provinces Council then inquired whether such an instruction could empower the Select Committee to enlarge the principles of the original Bill, and the President of the Bihar and Orissa Council suggested that the test which should be applied should be to permit such instructions as would be admissible in the form of amendments on a motion that the Bill be taken into consideration. The President of the United Provinces Council said that the Legal Remembrancer in his province had advised that it was beyond the power of the Council to issue any instructions at the time contemplated to a Select Committee.

The Conference, however, agreed generally that on a motion for reference to a Select Committee an amendment would be in order providing for the issue of instructions to the Select Committee but that these instructions could not direct the Select Committee to make any amendments which were contrary to the principles of the original Bill. The instructions issued to the Select Committee should be consistent with the principles of the Bill, and the test to be applied was whether the amendments contemplated to be made by the Select Committee would be admissible if moved as amendments when the Bill was taken into consideration. The President of the United Provinces did not agree that this was the proper test because at the last stage the details of the Bill and not its principles are under discussion and amendments can be made only with regard to the former and not the latter.

8. *Can a Select Committee go back upon the principles settled in Council at the First Reading?*

It was generally agreed that the Select Committee could not go back

on the principles settled in Council at the first reading.

*9. Who is to be appointed Chairman of the Select Committee in the case of Bills brought in by private members?*

The Conference agreed that this was a matter which depended entirely upon the Standing Orders in force.

*10. How far is a reference to the proceedings of the Select Committee permissible in the House?*

It was generally agreed that references to the proceedings of a Select Committee were not permissible in the House.

*11. On a motion for the consideration of a Bill as reported by the Select Committee, can an amendment be moved for re-circulation of the Bill if the Bill had not already been previously circulated before its reference to Select Committee?*

The Presidents of the United Provinces and Assam Councils considered that there was no difficulty in permitting such an amendment. The Bengal Standing Order was however different, and consequently this was not allowed in Bengal. The President of the Bihar and Orissa Council referred to the power of republication given to the Select Committee under the Standing Orders in force in Bihar, and he considered that the Council as a whole should obviously have the power to do what a Select Committee could do. The President of the Bengal Council however considered that the relevant Standing Order was exhaustive, and only the amendments specified in that standing order could be moved—a view with which the President of the Bihar and Orissa Council disagreed. The latter further raised the question as to the meaning of republication, and said that it was not clear whether it meant the same thing as re-circulation. It was taken generally that republication means very much the same thing as re-circulation. The President of the United Provinces Council however thought that republication in the Gazette was what was meant, whereupon the President of the Bihar and Orissa Council pointed out that republication in the Gazette would by itself be of very little use. The object of republication was clearly to enable the public to form some opinion on the Bill, but if republication meant republication in the Gazette, it might take place shortly before the consideration of the Bill in the Council and the public would therefore have very little opportunity to form any opinion on the Bill or to take any action in connection therewith. The Chairman said that he would allow amendments or recirculation.

The Conference finally agreed that the question whether such an amendment should be allowed depended mainly upon the particular standing orders in force, but that if there was nothing in the standing orders which specifically prohibited such an amendment, it should be allowed.

12. (a) *Can an amendment to an amendment be moved without two days' notice on the spur of the moment?*

(b) *What procedure should be followed if it is objected to?*

Rai Bahadur Lala Sita Ram said that in sending notice of this question he wished to invite discussion on the difficulty which he had experienced in deciding the question of substance rather than form, which arose when amendments to amendments had been proposed.

In the first place it was necessary to decide whether the amendment proposed to an amendment already moved was within the scope of the original amendment.

The Chairman here interposed that this was a question of admissibility of the amendment as such and had no connection with the question whether the notice required by the Standing Orders had been given.

Diwan Bahadur T. Rangachariar agreed with the Chairman and said there were no special restrictions applying to amendments to amendments and that such amendments were governed by the same rules as applied to amendments proposed to the original question.

Rai Bahadur Lala Sita Ram illustrated his point with reference to the United Provinces Primary Education Bill. Suppose the original provision of the Bill provided for primary education including the subjects of reading, writing and arithmetic and to this an amendment were proposed that religious education should be included in the subjects taught. Suppose to this amendment a further amendment was proposed providing for technical training, there will be difficulty in deciding whether the latter amendment was properly within the scope of the first amendment.

Diwan Bahadur T. Rangachariar, however, considered that in such a case the second amendment should be regarded as an amendment to the original provision of the Bill, and in the particular case cited by the President of the United Provinces Council, the second amendment would clearly be within the scope of the original clause. The other members agreed with Diwan Bahadur Rangachariar.

The Conference finally agreed, the President of the United Provinces Council dissenting, that amendments to amendments should be treated in precisely the same way as other amendments and that if objection was taken to such an amendment on the ground that the prescribed notice had not been given, it was for the President to exercise his discretion and decide whether he should suspend the standing order so as to allow the amendment to be moved. The President of the United Provinces Council thought that no previous notice of a merely formal amendment to an amendment should be necessary and that suspension of the Standing Order by the President in order to enable an amendment to an amendment to be moved was doing something which was not meant to be the normal procedure. The difficulty would be great in the case of Bills like the Agra Tenancy Bill with which he had to deal.

The Honourable Khan Bahadur Khwaja Muhammad Noor then said that he would like to have the views of the Conference on the following subsidiary question arising out of the preceding question, *viz* :—

“ Whether in the case of Standing Order similar to that contained in paragraph 82 of the United Provinces Manual, the President could disallow the amendment *suo motu* on the ground that the prescribed notice had not been given or whether his power of disallowance only arose after objection had been taken ”.

He expressed the view that in such a case the President had no power to interfere unless objection was taken. The Chairman doubted the correctness of this view and urged that the failure of members to object to the short notice could not affect the general power of the President to disallow an amendment on the ground that sufficient notice had not been given.

The President of the Bihar and Orissa Council was however inclined to doubt the existence of any such general power of the President.

Diwan Bahadur T. Rangachariar agreed with the view of the President of the Bihar and Orissa Council. He said the right to receive the proper notice of a motion or amendment was strictly the right of the House, as the provision for notice was primarily intended to prevent the members from being taken by surprise. If therefore no objection was taken the President could safely presume that the moving of the amendment would be in accordance with

the wishes of the House and that, therefore, if the President disallowed the amendment he would be acting contrary to the wishes of the House. The President of the Bengal Council said that in Bengal there was no Standing Order similar to the one contained in paragraph 82 of the United Provinces Manual, and that amendments to Bills were dealt with as ordinary motions.

It was however pointed out that the Standing Order of the Bengal Council which related to amendments (S. O. 68) to Resolutions was on the same lines as the Standing Order under discussion; and Diwan Bahadur T. Rangachariar asked the President of the Bengal Council how the Standing Order of the Bengal Council was in practice administered.

The President of the Bengal Council said that he adopted the view that the President was entitled to the notice required by the Standing Orders and that he had full power to disallow any amendment on the ground of notice, even though no objection was taken.

The Conference was divided in opinion. The Presidents of Bihar and Orissa and the United Provinces Councils and the Deputy President of the Legislative Assembly were of opinion that the President had no power to disallow the amendment if no objection was taken, while the Chairman, the Presidents of Bengal, Assam and the Central Provinces, and the Deputy Presidents of Bengal and Assam Councils took the view that the President could disallow such amendments *suo motu*.

**13.** *What is the exact meaning of the provision in paragraph 82 of the United Provinces Manual? If consideration of a Bill is fixed for a certain date and then adjourned, from what date should the two days mentioned in paragraph 82 be calculated? Should it be from the date originally fixed or from the date to which the consideration has been adjourned?*

The Deputy President of the Legislative Assembly considered that there could be no difficulty about the meaning of the paragraph of the United Provinces Manual referred to and stated that adjournments of the consideration of a Bill or any portion thereof were very often allowed merely for the purpose of enabling amendments to be sent in in time. The President of the Bihar and Orissa Council referred to the case where the consideration of a Bill was spread over some considerable period, and inquired whether in such a case notice of an amendment to any particular clause should be calculated from the date on which that particular clause



was taken into consideration. The President of the United Provinces Council considered that in this connection the Bill meant the same as a clause of the Bill, and that it was necessary to consider not the date originally fixed for the consideration of the whole Bill as such but the date on which any particular clause of the Bill would be taken into consideration. Upon the President of the Bihar and Orissa Council inquiring whether notices of amendments could then be received from day to day, the Deputy President of the Legislative Assembly stated that he did not consider that there was any objection to this being done, and that this practice was often followed. The Conference finally agreed that in the case of the time mentioned in the question, notices of amendments should be calculated not from the original date fixed for consideration but from the date to which the consideration was adjourned.

*14. When the question is put that a clause in the Bill as reported by the Select Committee stand part of the Bill, can any member move for its deletion without notice or begin opposing it even without a regular motion for the omission of that clause?*

The President of the United Provinces Council opening the discussion said that he had observed that it was the practice in the House of Commons to move for the deletion of a particular clause and cited many instances from the proceedings of the House of Commons on which there was a report to the effect that a certain member "moved for the deletion of a certain clause." He considered that an amendment of this nature was really in the nature of a negative vote, though he said that considerations of convenience would induce him to allow such motions as in the absence of such a specific motion the opposition would be taken by surprise. The Chairman however pointed out that this could not be avoided. The President of the Bengal Council was inclined to draw a distinction between cases where a Bill was put clause by clause and where some or all of the clauses of the Bill were put together. In the latter case it would clearly be necessary to allow the motion for the deletion of a clause as a member would otherwise not have any opportunity of objecting. Where however a Bill was put clause by clause, a specific motion for deletion was unnecessary and there was nothing to prevent any member from opposing the motion that such a clause stand part of the Bill. The President of the Bihar and Orissa Council said that it was his practice to disallow such motions when the Bill was put clause by clause. The President of the Legislative Assembly pointed out that the disallowance of such

motions might result in a certain amount of difficulty and inconvenience as regards the moving of consequential amendments. The President, Bihar and Orissa Council, however pointed out that there was specific provision, after a Bill had been taken into consideration, for the postponement of the passing of the Bill, to enable consequential amendments to be made.

The Conference finally agreed that there was no objection to the practice existing in such Councils of allowing such motions to be made, though there was nothing to prevent a member opposing the question that a certain clause stand part of the Bill even without a specific motion for its deletion.

**15. Interpretation of section 81A (2).**

(a) *Has the Governor power to return a Bill under section 81A (2) for reconsideration in part and can he send amendments to the Bill?*

(b) *If he can send amendments is his power exhausted with the first list of amendments or can he send amendments a second or third time and in any case can he send amendments after the expiry of the period of six months mentioned in section 81A (2)?*

(c) *Can private members bring forward amendments to—*

(i) *those parts of the Bill which are touched by the Governor's amendments, and*

(ii) *those parts of the Bill which are not touched by them?*

(a) The Deputy President of the Legislative Assembly referred to the distinction in the language of section 81A (1) and 81A (2) and expressed the view that in view of this difference of language the Governor could not return a Bill for reconsideration in part only under section 81A(2). The President of the United Provinces Council, however, disagreed. The President of the Bengal Council considered that if the Governor was limited to returning the Bill for reconsideration generally, the differences between the Governor and the Council might continue indefinitely and he further inquired whether the consideration of a Bill, which had already been considered possibly in the same session by the Council, would not be contrary to the provisions of the Standing Order which provided that a motion should not raise a question substantially identical with one which had been raised in the same session. The President of the Bihar and Orissa Council observed that the Standing Orders in Bihar and Orissa had been already amended to meet this difficulty. The Chairman suggested that as this matter, which had been raised in connection with certain difficulties

experienced in the Madras Council, was incidentally pending for decision of the Courts, it was unnecessary for the Conference to discuss it as the matter was *sub judice*. The President of the Assam Council, however, suggested that as the proceedings of the Conference were confidential there could be no objection to the expression of their views on the matter and the discussion was thereupon continued. The President of the United Provinces Council gave it as his reason for disagreeing from the view that the Bill could not be returned for reconsideration in part that the effect of this would be that the whole Bill could always be thrown open for reconsideration and he referred to Standing Order 60 of the United Provinces Council which seemed to preclude the whole Bill being reconsidered. The Deputy President of the Legislative Assembly, however, referred to the language of clause(b) of section 81A(2) which contained the words "If the Bill is reaffirmed" and suggested that the reference to the Bill as such clearly contemplated that the whole Bill would come under reconsideration. The President of the United Provinces Council, however, adhered to the view that it was only the specific amendments proposed by the Governor which were under consideration and not the whole Bill. He pointed out that this was also the view expressed at a previous Conference by his predecessor in office.

Finally, the Conference agreed, the President of the United Provinces Council dissenting, that the Governor had no power to return a Bill for reconsideration in part under section 81A(2).

(b) The Conference generally agreed that there was nothing in the provisions of the law to prevent the Governor from sending amendments from time to time, but that he could not send any such amendments after the prescribed period of six months had expired.

(c). (i) The Conference agreed unanimously that private members could bring forward amendments to those portions of the Bill which were affected by the amendments of the Governor.

(ii) All present, except the President of the United Provinces Council, agreed that it was possible to send amendments even to those parts of the Bill not touched by the Governor's amendments.

**16.** *Can a special member appointed under section 72A(2), proviso (1) of the Government of India Act for the purposes of a Bill, continue to sit in his seat in the Council after the conclusion of the Bill and after some*

*other business is commenced without taking part in such business ?*

The Chairman opening the discussion said that he considered that a member appointed for the special purposes of a Bill could not sit in the Council after the conclusion of the Bill. The President of the Bengal Council, however, pointed out that difficulties might arise from the acceptance of this view in a case where a Bill was returned by a Governor for reconsideration. The Chairman, however, observed that there would be no difficulty in renominating the member. The President of the Bihar and Orissa Council disagreed with this view and considered that the member would remain a member without the necessity for renomination if the Bill were returned for reconsideration by the Governor. He further considered that there was nothing to prevent a member sitting in the House before the conclusion of the Bill even when other business was being considered. The Deputy President of the Legislative Assembly, however, pointed out that as the member was only appointed for the purposes of the Bill he could do nothing when other business was being considered. The President of the Bihar and Orissa Council, however, considered that there was no objection to his sitting when other business was being considered as long as he was not allowed to take part in such business either by speech or vote. Upon this the Deputy President of the Legislative Assembly observed that he was strictly speaking a stranger except in relation to the Bill for which he was appointed and it was open to another member to call the attention of the President to the effect that there were strangers in the House, for it must be considered that a member nominated for the special purposes of a Bill was a stranger to the House except when such Bill was being considered.

The President of the Bengal Council considered, however, that as a matter of courtesy, the member might be permitted to sit in his place.

The President of the Assam Council was of opinion that the member was none the less a member of the Council, even though his right to participate in the business of the Council is limited.

The Conference did not express a decided opinion, but it was on the whole considered that strictly speaking a member nominated for the special purposes of a Bill had no right to sit in the House when such Bill was not being considered.

*17. According to the Standing Orders of the Central Provinces Legislative Council, when a Select Committee is appointed for the consideration of a Bill introduced by a non-*

*official Member, the Member of Government in charge of the Department to which it relates is an ex-officio member and has to preside at the meetings of the Select Committee. If before the Select Committee meets, the Member in charge of the Department is transferred to another Department in the same Government, which member should be present and preside at the Select Committee meetings—the man transferred or the member in charge at the time when the Select Committee meets?*

*If the Member of Government in charge of the Department who is elected or named on this Committee goes on leave or is transferred elsewhere, who is to preside?*

It was generally agreed that the Member of Government in charge of the Department concerned was an *ex-officio* member of the Select Committee, and it was not necessary to name him as a member of the Committee and that the particular person who was the Member of Government for the time being when the Committee sat was entitled to be a member of the Select Committee.

### BUDGET PROCEDURE.

*1. When the question that a certain demand be granted is put, can any member move for the omission of the demand without notice or begin opposing the demand even without a regular motion for its omission?*

*2. What is the effect of new rule 30? Does it deprive the Council of the power of moving the entire omission of a grant?*

The Conference agreed generally that it was unnecessary to discuss this question any further now as the provisions of new rule 30 were perfectly clear on the point, and that while a member could oppose an entire demand, a motion for the omission of the demand was clearly out of order.





